

DON URBANO PEREZ.

MARCH 23, 1860.

Mr. STANTON, from the Committee on Military Affairs, made the following

### REPORT.

*he Committee on Military Affairs, to whom was referred the petition of Don Urbano Perez, a citizen of Mexico, for rent of a house in Matamoras, and compensation for damages done the same while occupied by American troops during the late war with Mexico, submit the following report:*

It appears from the testimony submitted that the petitioner, a citizen of Mexico, was, at the time of the surrender of the town of Matamoras to General Taylor, the owner of a house of fourteen rooms, and out-buildings, in said town; that the said house was, at three several times during the year 1847, taken possession of by the American volunteer forces, and occupied as quarters, for terms amounting in the aggregate to three months and nine days; that during the occupancy of said house as aforesaid great damages were done to the premises, some of the walls of the house being torn down, and others perforated with holes; the stables and other out-buildings demolished, and the materials burned; wells in the yard filled up, &c.

The petitioner claims rent for his premises, at the rate of \$120 per month during the time they were so occupied, amounting to \$396, and damages amounting to \$838 62.

There is nothing in the testimony to show what would be a reasonable rent for said premises at the time they were so occupied; but according to the evidence, the damages do not appear to be over-estimated.

Captain W. W. Chapman, assistant quartermaster of the United States army at Matamoras, in a letter to Major Vinton, chief quartermaster, dated Matamoras, March 11, 1848, says that he has examined the premises, and is "fully convinced that the amount [of damages] charged is rather under than over the mark."

The petitioner bases his claim to compensation from this government, for the use of his private property, and for damages done the same, upon the instructions issued to General Taylor by the War Department, and upon pledges given by General Taylor himself to the authorities of Matamoras at the time of taking possession of the town. He refers to a proclamation at that time issued by General

Taylor, in which he says: "Your religion, your altars and churches, the property of your churches and citizens, the emblems of your faith and its ministers, shall be protected and remain inviolate." He also refers to General Taylor's report of the occupation of Matamoras, in which he says: "I immediately despatched staff officers to the prefect to demand a surrender, and in the meantime a commissioner was sent by the prefect to confer with me on the same point. I gave assurances that the civil rights of the citizens should be respected," &c. He also refers to the letter of Secretary Marcy to General Taylor, dated June 4, 1846, in which, referring to the aforesaid proclamation of General Taylor, the Secretary says: "You will use your utmost endeavors to have the pledges and promises therein contained carried out to the fullest extent." Also to a letter of Secretary Marcy to General Taylor, of September 22, 1846, in which he says: "The instructions heretofore given have required you to treat with great kindness the people, to respect private property, and to abstain from appropriating it to public use without purchase at a fair price."

The petitioner claims that these instructions and these pledges impose upon this government a duty or obligation to indemnify him for the use of his private property, and the damages done the same by the troops of the United States, in violation of said instructions and pledges.

The petitioner applied to General Taylor in Mexico for redress of his grievances, who referred the claim to Colonel Whiting, quartermaster general, "to investigate the same and give such directions as justice may demand." Colonel Whiting took no definite action in the case, and it was finally referred to the quartermaster general at Washington, (General Jesup.) In a letter dated May 29, 1848, addressed to Major Vinton, quartermaster at Monterey, Mexico, General Jesup says:

"There seems to have been no contract by the quartermaster's department with the owner, nor any assignment by the department to the troops. The occupation was by military authority; the quartermaster's department has nothing to do with it; the general in command has the authority to inquire into the circumstances attending such claims; and when there is no contract, and when houses are taken possession of by military authority, Congress alone can provide, unless the general directs payment from the revenue raised in Mexico."

The petitioner afterwards presented his claim to the War Department at Washington, and on the 10th day of August, 1849, Mr. Crawford, Secretary of War, wrote to his attorney on the subject as follows:

"The house appears to have been taken possession of without any previous agreement or contract with the owner, and the case is therefore, as it has been styled by the quartermaster general, one of military impressment. This fact, apart from the actual injury done to the buildings, which is the ground of two-thirds of the claim, gives to the whole the character of a claim for damages, and such it would have been considered if arising within the limits of the United States. Whether the occupation of the house under the circumstances in an

enemy's country was in the proper exercise of a belligerent right, or whether, as you contend, it was in violation of orders from this department, and in contravention of terms of proclamations issued by the general in command, the nature of the case remains the same, and refers it to a class of which Congress only has cognizance—that of damages or wrongs resulting from the acts of public officers, as distinguished from contracts entered into by the proper staff officers of the army and other authorized agents in pursuance of law, which the Executive is charged with the duty of seeing properly executed.”

While the committee must admit that neither the instructions issued to General Taylor by the Secretary of War nor the pledges which General Taylor gave to the authorities of Matamoras seem to have been faithfully carried out in the case of the petitioner, they cannot recognize the principle that the non-fulfilment of those instructions and pledges confers upon citizens of Mexico any right to demand redress at the hands of this government. For any wilful violation of instructions issued to him by the War Department, the commanding general would of course be responsible to his own government; but those instructions were not intended to confer upon the citizens of Mexico any rights to be enforced against this government in case of their non-fulfilment. It is to be presumed that General Taylor did carry out the instructions of the War Department and his own pledges to the utmost of his ability. But neither the Secretary of War nor General Taylor himself ever assumed to bind this government to indemnify citizens of Mexico for losses which they might suffer in consequence of the violation of said instructions and pledges by the officers and troops under his command.

It is one of the unavoidable evils of war that the property of non-combatants is liable to be destroyed by invading armies, leaving the owners wholly without remedy, either as against the invading government or their own.

The case of the petitioner is doubtless a hard one. Upon principles of abstract justice he may be as much entitled to compensation for the use and abuse of his property as if it had been taken and used under a contract with the proper officers of the American army. Yet the committee conceive that his claim against this government for indemnity cannot be recognized without opening the door to an almost endless class of claims founded on injuries done to private property by our invading armies in Mexico, which, according to well-settled principles of international law, our government is under no obligation to satisfy.

The committee therefore report adversely to the prayer of the petitioner, and ask to be discharged from the further consideration of the subject.

